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GOOGLE INC.

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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION  
18

19 ORACLE AMERICA, INC.,  
20  
21 Plaintiff,  
22 v.  
23 GOOGLE INC.,  
24 Defendant.

Case No. 3:10-cv-03561 WHA

**SUPPLEMENTAL DECLARATION OF  
MARK H. FRANCIS IN SUPPORT OF  
DEFENDANT GOOGLE INC.'S'  
AMENDED MOTION FOR LEAVE TO  
SUPPLEMENT INVALIDITY  
CONTENTIONS**

Date: August 18, 2011  
Time: 2:00 p.m.  
Courtroom: 9, 19th Floor  
Judge: The Honorable William Alsup

Trial Date: October 31, 2011

1  
2 I, MARK H. FRANCIS, declare as follows:

3 1. I am an associate in the law firm of King & Spalding LLP, counsel for defendant  
4 Google Inc. ("Google") in this case. I submit this supplemental declaration in support of  
5 Google's Reply on its Amended Motion for Leave to Supplement Invalidity Contentions. I make  
6 this declaration based on my own personal knowledge. If called as a witness, I could and would  
7 testify competently to the matters set forth herein.

8 2. On February 15-17, 2011, Google filed five re-examination requests with the  
9 United States Patent and Trademark Office, collectively including 19 invalidity claim charts,  
10 three of which were newly developed and not in the original invalidity contentions.

11 3. On March 1, 2011, Google filed two re-examination requests with the United  
12 States Patent and Trademark Office, collectively including 10 invalidity claim charts, four of  
13 which were newly developed and not in the original invalidity contentions

14 4. On April 15, 2011, Google filed one re-examination request with the United  
15 States Patent and Trademark Office, collectively including 3 invalidity claim charts, two of  
16 which were newly developed and not in the original invalidity contentions.

17 5. On May 16, 2011, in the course of meeting and conferring over whether Oracle  
18 would agree to allow supplementation of Google's contentions, I sent Oracle a set of 10  
19 invalidity claim charts not in the original invalidity contentions (and a few revised charts).

20 6. In mid-February 2011, the parties held numerous meet-and-confer calls to discuss  
21 proposed claim constructions and identify claim terms to be briefed for the *Markman* hearing.  
22 During those discussions, Scott Weingaertner and I asked Marc Peters (counsel for Oracle) to  
23 narrow the number of asserted claims. Mr. Peters agreed that Oracle would not be going to trial  
24 on 132 claims, but refused to drop any asserted claims at that time. Additional requests for  
25 Oracle to drop the number of asserted claims have been made continuously throughout  
26 discovery.

27 7. Between the beginning of June and July 8, Oracle served six deposition notices or  
28 subpoenas, six 30(b)(6) deposition notices, 6 interrogatories, 244 requests for admission, and 29

1 requests for production – all which required responsive action within a month – and Google  
2 served five deposition notices or subpoenas, ten 30(b)(6) deposition notices, 35 requests for  
3 production, 429 requests for admission, 7 interrogatories; amended its initial disclosures;  
4 responded to written discovery; produced over a million pages, supplemented its privilege log  
5 and took or defended three depositions.

6 I declare under penalty of perjury that all the foregoing facts are true and correct and that  
7 this declaration was executed on August 3, 2011 in New York, New York.

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